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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/033,605

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Mikelyn Roderick

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24984

7590

08/25/2004

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EXAMINER

SUHOL, DMITRY

ART UNIT

PAPER NUMBER

3712

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DATE MAILED: 08/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/033,605

Applicant(s)

RODERICK, MIKELYN

Examiner

Dmitry Suhol

Art Unit

3712

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 12-13, 18-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 1, 12, there is no antecedent basis for "the letters of the alphabet". There are a variety of letters corresponding to a variety of alphabets, therefore it is not clear which particular alphabet and its corresponding letters are being claimed.

Regarding claim 18, it is not clear if applicants are attempting to claim a combination/subcombination of a bottle and a fluid since claim 2 is drawn to structural features of a bottle (whose intended use is to carry fluid) while claim 18 appears to be drawn to a specific type of fluid.

Regarding claim 19, the metes and bounds encompassed by the phrase "and/or" can't be determined.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cornell et al '326 in view of Demery '492. Cornell discloses a set of bottles containing most of the elements of the claims including, a set of hollow structures having an upper surface with an opening and a lower surface (bottles in figures 1 and 5-6) as required by claims 1 and 2, a tubular neck having an upper edge and a lower edge, wherein the lower edge is integral with the bottle opening (cylindrical neck 26) as required by claims 1 and 2, a bottle cap releasably attached to the upper edge of said tubular neck (cap 30) as required by claims 1 and 2. A bottle cap having means for being releasably attached to the tubular neck, as required by claim 2, is considered to be the threads carried by the bottle cap as shown in figure 1. Bottles being made of plastic, as required by claim 3, are shown described in col. 1, lines 44-45. A tubular neck comprising a set of external threads, as required by claim 5, is shown in figure 3. A bottle cap comprising a set of internal threads, as required by claims 6 and 7, is shown in figure 1 and described in col. 2, line 27.

Cornell fails to teach bottles in a shape of letter of an alphabet as required by claims 1 and 2, bottles being dimensioned to hold between 7 to 9 ounces of fluid as required by claim 4. However, Demery discloses that it is known to manufacture bottles in the shapes of letters (figures 1-18). Therefore it would have been obvious to manufacture the bottles of Cornell in the shape of letters of the alphabet for the purpose

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of interest to the consumer, especially since Cornell clearly teaches that his bottles can take on any desired shape (col. 2, lines 7-11).

Regarding the volume of the bottles, as required by claim 4, it would have been obvious to manufacture the bottles of Cornell being able to hold a volume of 7 to 9 ounces of fluid since the examiner takes official notice that the above dimensions for bottles of drinking fluid are well known in the art (i.e. Coca-Cola and Pepsi make an 8 ounce bottle of soda).

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cornell et al '326 and Demery '492, as stated above, and further in view of Ferrell '785. Cornell, as modified by Demery, discloses most of the elements of the claims, as stated above, but for a multiplicity of gripping serrations as required by claim 8. However, Ferrell discloses a cap for bottles which teaches that it is known to provide serrations on caps (see abstract). Therefore it would have been obvious to incorporate serrations in the cap of Cornell for the purpose of better gripping.

Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cornell et al '326 and Demery '492, as stated above, and further in view of Green '471. Cornell, as modified by Demery, discloses most of the elements of the claims, as stated above, but for a bottle cap comprising a pop-up cap having a threaded twist of cap and a pop-up section as required by claim 9, a bottle cap comprised of threaded lift tab cap having a normally-closed lift tab that covers a cap opening as required by claim 10, a

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drinking straw dimensioned to fit into the cap opening as required by claim 11. However, Green discloses a cap for a bottle like that of Cornell which teaches that it is known to utilize twist off caps with pop-up (30) and lift tab features (21) covering an opening with a drinking straw sized to fit within the opening (figures 1-2). Therefore it would have been obvious to incorporate the cap features of Green with the cap of Cornell for the purpose of allowing a user to drink from a variety of openings where the openings are resealable to prevent leakage, especially since Cornell clearly teaches that his cap may take on a variety of forms (col. 2, lines 24-31).

Claims 1-7, 12-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cornell et al '326 in view of Metcalf et al (GB 2069460). Cornell discloses a set of bottles containing most of the elements of the claims including, a set of hollow structures having an upper surface with an opening and a lower surface (bottles in figures 1 and 5-6) as required by claims 1, 2 and 20, a tubular neck having an upper edge and a lower edge, wherein the lower edge is integral with the bottle opening (cylindrical neck 26) as required by claims 1, 2 and 20, a bottle cap releasably attached to the upper edge of said tubular neck (cap 30) as required by claims 1, 2 and 20. A bottle cap having means for being releasably attached to the tubular neck, as required by claim 2, is considered to be the threads carried by the bottle cap as shown in figure 1. Bottles being made of plastic, as required by claim 3, are shown described in col. 1, lines 44-45. A tubular neck comprising a set of external threads, as required by claim 5, is shown in figure 3. A bottle cap comprising a set of internal threads, as required by

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claims 6 and 7, is shown in figure 1 and described in col. 2, line 27. Bottles comprising an area onto which indicia can be applied, as required by claim 1, is considered to be any portion of the bottle as shown in figure 4. It is inherent that bottle (10) is dimensioned to carry a fluid such as water or fruit juice as required by claim 18. A tray, as required by claim 19, is shown as container 60 in figures 5 and 6. A fluid, as required by claim 20, is described in col. 2, line 25-26.

Cornell fails to teach bottles in a shape of letter of an alphabet as required by claims 1 and 2, all letters of the alphabet as required by claim 12, letters A through Z as required by claims 13 and 20, lower case letters ranging from a to z as required by claim 14, grammatical punctuation marks as required by claim 15, a set of numbers ranging from 1 to 0 as required by claim 16, bottles being dimensioned to hold between 7 to 9 ounces of fluid as required by claim 4. However, Metcalf teaches that it is known to manufacture containers that may hold liquids in the shape of letters of the alphabet ranging from letter A to Z and numbers ranging from 1 to 0 (figures 3-5 and page 1, lines 124-126). Therefore it would have been obvious to manufacture the containers of Cornell in the shape of letters of the alphabet for the purpose of providing personalized packaging, especially since Cornell clearly teaches that his bottles can take on any desired shape (col. 2, lines 7-11).

Regarding the volume of the bottles, as required by claim 4, it would have been obvious to manufacture the bottles of Cornell being able to hold a volume of 7 to 9 ounces of fluid since the examiner takes official notice that the above dimensions for

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bottles of drinking fluid are well known in the art (i.e. Coca-Cola and Pepsi make an 8 ounce bottle of soda).

Regarding claims 14 and 15 with respect to the bottles being in the shape of lower case letters and grammatical punctuation marks, it would have been obvious to manufacture the bottles of Cornell in such specific shapes since the examiner takes official notice that such bottle shapes are commonly known and available in the art. Furthermore the shapes of the bottles being a lower case or a punctuation mark is considered to be a design choice as applicants disclose no advantage or critical need for such specific shapes (see applicants specification page 6, lines 18-25).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dmitry Suhol whose telephone number is 703-305-0085. The examiner can normally be reached on Mon - Friday 9am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on 703-308-1745. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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**DERRIS H. BANKS**  
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